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December 13, 1996

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ARTHUR I. JACOBS  
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Florida Public Service Commission  
Division of Water and Wastewater

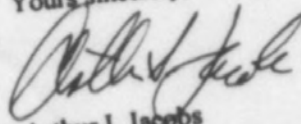
961529-WU

Florida Public Service Commission  
Clerk of Water/ Sewer Section  
2540 Shumard Oak Boulevard  
Gunter Building  
Tallahassee, Florida 32399-0850

Dear Sir:

Enclosed herewith please find a request for Amendment to Florida Public Utility Company Water Tariff.  
Should you have any questions, please do not hesitate to contact me.

Yours sincerely,



Arthur I. Jacobs  
General Counsel  
Florida Public Utilities Company

AJJ/bs

Enclosure

cc: Margaret E. O'Sullivan

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SERVICES DIVISION

DOCUMENT NUMBER-DATE  
~~13698~~ DEC 24 96  
FPSC-RECORDS/REPORTING

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Request for approval of )  
Florida Public Utilities Company )  
entering into agreement with City )  
of Fernandina Beach revising Tariff )  
to allow for the discontinuance of )  
water service of any customer owing )  
unpaid sewer bills to the City of )  
Fernandina Beach pursuant to )  
Section 159.18(2), Florida Statutes. )  
\_\_\_\_\_ )

DOCKET NO. 961529-WU

FILED: December 17, 1996

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FILE COPY

FLORIDA PUBLIC UTILITIES COMPANY (F.P.U.C.) is a water utility located in Fernandina Beach, Nassau County. Pursuant to F.P.U.C. Water Tariff, it is allowed to operate in that jurisdiction pursuant to an ordinance of the City of Fernandina Beach granting to F.P.U.C. a non exclusive water franchise. This ordinance has recently been extended in Ordinance 96-5, a copy of which is attached to this request as Exhibit "A".

Chapter 159.18(2), Florida Statutes, provides as follows:

2) Any municipality shall have power to enter into valid and legally binding contracts with any person, public or private corporation, board or other body supplying water to any premises served by the sewer system or facilities of the municipality for the shutting off and discontinuing of its supply of water to such premises as long as the charges for the sewer services or the facilities of the municipality are unpaid ...

The City of Fernandina Beach supplies sewer services to those persons receiving water services from F.P.U.C. The City of Fernandina Beach has granted to F.P.U.C. a franchise to operate in this area. The City of Fernandina Beach and F.P.U.C. seek approval of this Commission to enter into an agreement whereby if sewer bills are unpaid the F.P.U.C., upon request of the City, may shut off the water supply until the bills are paid. This would be a revision of their Tariff at the to become

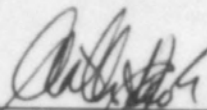
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FFSC-RECORDS/REPORTING

third revised sheet No. 15 dated June 28, 1993 adding Section 13.B.(5). The proposed amendment is attached hereto as Exhibit "B".

Respectfully submitted,



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ARTHUR I. JACOBS, ESQUIRE  
General Counsel for  
Florida Public Utilities Company (F.P.U.C.)  
Post Office Box 1110  
Fernandina Beach, Florida 32034  
(904) 261-3693

ORDINANCE NO. 96-5

AN ORDINANCE GRANTING TO FLORIDA PUBLIC UTILITIES COMPANY, ITS SUCCESSORS AND ASSIGNS A NON-EXCLUSIVE WATER FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO, PROVIDING FOR PAYMENTS TO THE CITY OF FERNANDINA BEACH, AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF FERNANDINA BEACH, FLORIDA:

Section 1. There is hereby granted to Florida Public Utilities Company (herein called the "Grantee"), its successors and assigns, the non-exclusive right, privilege or franchise to construct, maintain and operate in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places in the City of Fernandina Beach, Florida (herein called the "Grantor") and its successors, including future annexed areas, in accordance with established practice with respect to water construction and maintenance, for a term of thirty (30) years beginning from the date of the final adoption of this ordinance and terminating on midnight of the last day of the (30) year term, from the date of acceptance hereof until November 1, 1998, water distribution facilities (including pipes, hydrants, pumps, tanks and meters) for the purpose of supplying water to the Grantor and its successors, and inhabitants thereof, and persons and corporations beyond the limits thereof, (herein called "the franchise").

Section 2. The facilities of the Grantee shall be so located or relocated and so erected as to interfere as little as possible with traffic over said streets, alleys, bridges and public places, and with reasonable egress from and ingress to abutting property. The location or relocation of all facilities shall be made under the supervision and with the approval of such representatives as the governing body of the Grantor may designate for the purpose, but not so as to unreasonably interfere with the proper operation of the Grantee's facilities and service. When any portion of a street is excavated by the Grantee in location or relocation of any of its facilities, the portion of the street so excavated shall, within a reasonable time and as early as practicable after such excavation, be replaced by the Grantee at its expense and in a condition consistent with the City's specifications and/or those of the Florida Department of Transportation.

Section 3. Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities or the furnishing of water service to customers hereunder, and the

EXHIBIT A

acceptance of this ordinance shall be deemed an agreement on the part of the Grantee to indemnify the Grantor and hold it harmless against any and all liability, loss, cost damage or expense which may accrue to the Grantor by reason of the negligence, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder or the furnishing of water service to customers. In case Grantee refuses or neglects to repair any of said public grounds, drains, storm sewers, catch basins, or other like improvements within a reasonable time after work is completed and notice in writing of such refusal or neglect shall have been given by Grantor to Grantee, the ~~City Commission~~ Grantor may direct the necessary repairs thereof to be made at the expense of Grantee, and Grantee shall be responsible for all damages sustained by any person or persons by reason of such refusal or neglect on the part of Grantee.

Section 4. That when any streets, roads, alleys, avenues, bridges, parkways or other public places upon, under or in which any plants, works, mains, services, conduits, tanks or apparatus of Grantee have been placed, shall be graded, curbed, paved, resurfaced, widened, or otherwise changed so as to make the relocation or reconstruction of such utility components as necessary, Grantee, its successors or assigns shall make such necessary changes required by said construction in a reasonable time after receiving written notice from the authorized representative of the municipality Grantor. Grantor agrees to include in the cost of such improvements and to pay all necessary costs to relocate or reconstruct mains or other changes required and necessary to the operation and maintenance of said utility components of the waterworks and to have the work done under the terms of the general contract for the Grantor's improvements or construction. If Grantee shall be ordered or requested to make any such change, the cost of such work shall be billed to Grantor, and Grantor shall pay Grantee for the same. If such improvements are constructed by any contractor engaged by Grantor for the purpose of making such public facilities improvements, then the required changes in the said utility components of the waterworks shall be completed by duly qualified personnel subject to the acceptance and supervision of a duly authorized officer or agent of Grantee.

Section 5. Should it become necessary or should Grantee desire to extend from time to time its pipes or other facilities, Grantees shall make application to the municipality for permission therein and for the establishment of permanent grades and Grantee shall not be required to install such pipes or other facilities until such permanent grades have been established. Grantor shall establish such permanent grades upon such application.

Section 6. Grantee shall install and maintain meters for measuring water, and shall have the right of ingress and egress to the premises of each consumer, from time to time, for the purpose of reading, repairing, testing and maintaining Grantee's meters and appurtenances. Such meters and appurtenances shall at all times remain the property of Grantee and shall be removable at any time.

Section 7. All rates and rules and regulations established by the Grantee from time to time shall at all times be reasonable and the Grantee's rates for water shall at all times be subject to such regulation as may be provided by law.

Section 8. Within thirty (30) days after the last day of each month the Grantee, its successors and assigns, shall pay or have paid to the Grantor or its successors a privilege tax in an amount equal to six percent (6%) of Grantee's gross base revenues (gross revenues being the amount billed less charge-off for uncollectible accounts and adjustments) from the sale of water to residential and commercial customers within the corporate limits of the Grantor, for the preceding month.

Section 9. Grantee shall, concurrent with the payment of the annual privilege tax, provide Grantor a statement which sets forth the calculation, and pertinent information used therein, to determine the annual amount of privilege tax being paid or to be paid.

Section 10. The accounts and records of the Grantee pertaining to water service rendered under this franchise shall be maintained within the State of Florida, and Grantor may, at its option, upon reasonable notice to Grantee, at any time during the sixty (60) days after the close of each fiscal year of this grant, or at such other times as mutually agreed to between the parties, examine said accounts and records as such relate to the calculation of the franchise payment to the Grantor. Such examination of accounts and records of Grantee by Grantor shall be made during the regular business hours of the Grantee at the general office of the Grantor. The Grantee shall maintain its records in sufficient detail that revenues within the corporate limits of the Grantor are readily discernible from other revenues for auditing purposes. All examinations shall be at the sole expense of the Grantor. However, if the Grantor conducts an audit of the Grantee's books and records, and substantial discrepancies are discovered which result in sums which should have been paid to Grantor, then the cost of such audit will be paid by Grantee.

Section 11. All rights herein granted and authorized shall be subject to and governed by this ordinance, the laws of the State of Florida and applicable regulations and rulings of the Florida Public Service Commission or its successors, provided that Grantor expressly reserves unto itself all of its police power to adopt general ordinances necessary to protect the safety and welfare of the general public in relation to the rights hereby granted not inconsistent with the provisions of this ordinance.

Section 12. That during the term of this ordinance, no charge, tax or assessment other than ordinary building permit fee shall be made by Grantor to Grantee for any permit or privilege to excavate in or to use public grounds of Grantor for the purpose of the erecting, installation, placement, operation and maintenance of all plants, works, mains, services, conduits, pipes, tanks or other apparatus or for otherwise carrying out the provisions of this ordinance.

Section 13. As a further consideration of this franchise, the Grantor agrees not to engage in the business of distributing and selling water during the life of this franchise or any extension thereof in competition with the Grantee, its successors and assigns, further, should Grantor adopt an ordinance granting another or additional potable water service franchise during the life of this agreement, Grantor ensures Grantee that any such franchise will contain substantially the same terms, conditions and provisions as those contained in this agreement.

Section 14. Grantee by the acceptance hereof further agrees to erect and maintain without cost, except for fire hydrant rental to be charged according to the published rates of the Grantee, such fire hydrants as the Grantor shall from time to time consider necessary and proper to meet the reasonable needs of the Grantor for fire protection. It being expressly understood, however, that in the event said Grantor shall request the erecting or placing of any fire hydrant and shall subsequently request the discontinuance of said fire hydrant prior to the expiration of this franchise, then the Grantor shall reimburse the Grantee for its expense in the erecting and removing of such discontinued fire hydrant. The intention being that the Grantee will make any just and reasonable extension of its water system which may be requested by the Grantor commensurate with a fair and compensatory return on the fair value of the property used and useful in furnishing such extensions, provided, however, that no reimbursement shall be required for removal of hydrants made inoperational by Grantee at its instance. Grantee shall develop a continuing five year program for the replacement, restoration and addition of hydrants to ensure adequate fire protection.

Section 15. Grantor hereby reserves the right at and after the expiration or termination of this grant to purchase the water utility property of Grantee within the boundaries of the City of Fernandina Beach, Florida, and, as a condition precedent to the taking effect of this grant, Grantee shall give and grant to Grantor, and, by its acceptance hereof, Grantee shall be conclusively deemed to have given and granted to Grantor, the right to purchase so reserved. Acquisition of Grantee's property by Grantor shall conform to conditions and procedures set forth in Section 180.16 of State of Florida Statutes.

Section 16. That in the event Grantee shall at any time during the term of this ordinance desire to sell the waterworks then existing and shall have received a bona fide offer from any other person, firm, corporation or from any other municipal corporation, authority or political subdivision of the State of Florida satisfactory to Grantee to purchase the same, Grantee shall within ten (10) days after receipt of said bona fide offer advise Grantor in writing of the purchase price and other terms and provisions of such offer, and the municipality Grantor shall for a term of sixty (60) days after the giving of such notice have the option to elect to purchase the waterworks from Grantee upon the terms and conditions as are set forth in said offer, and shall close on said purchase within six months of said election. In the event Grantor shall fail or refuse to exercise the right and option granted to it by this section within the time limit set forth above, and Grantee shall sell the waterworks to the prospective purchaser thereof, the right and option given to Grantor to purchase the property under the terms and provisions of Section 15 of this ordinance shall continue in full force and effect as to such purchaser, and its successors or assigns. This right of first refusal shall not apply in the event of the sale of all of the assets of Grantee located in other areas beyond Nassau County, Florida, nor shall it apply to the involuntary sale of the waterworks by merger, takeover or condemnation.

Section 17. That title to all water utility components wherever situate on public grounds or on easements for public utility purposes, shall be and remain in Grantee, its successors or assigns.

Section 18. That after the passage and approval of this ordinance and within sixty (60) days after such approval, this ordinance shall be accepted by Grantee by its filing with the City Clerk of the City of Fernandina Beach an unconditional written acceptance thereof. Failure of Grantee to so accept this ordinance within said period of time shall be deemed a rejection thereof by Grantee, and the rights and privileges herein granted shall, after



the expiration of said period of sixty (60) days, if not so accepted, absolutely cease and determine, unless said period of time shall be extended by ordinance duly passed for that purpose.

Section 19. That Grantee shall at all times comply with the continuing requirements of the Florida Public Service Commission to maintain a program to modernize the existing water system of the City of Fernandina Beach.

Section 20. That to the extent now or hereafter permitted by the statutes or laws of the State of Florida, this ordinance shall inure to the benefit of an be binding upon any city, village or other municipal corporation to which the franchised area of the City of Fernandina Beach may hereafter be attached or annexed, or into which it may be incorporated, also any agency, instrumentality or political subdivision of the State of Florida which may be authorized or empowered to furnish water service within the present or future franchised area within the corporate limits of the City of Fernandina Beach.

Section 21. That all provisions of this ordinance which are obligatory upon or which inure to the benefit of ~~said Florida Public Utilities Company~~ Grantee shall also be obligatory upon and shall inure to the benefit of all successors and assigns of ~~said Florida Public Utilities Company~~ Grantee and the word "Grantee" wherever used in this ordinance shall include and be taken to mean not only Florida Public Utilities Company, but all successors and assigns of ~~said Florida Public Utilities Company~~ the Grantee.

Section 22. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this ordinance shall be grounds for forfeiture of this grant, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until the question of such default has been submitted to arbitration, in accordance with the Florida Arbitration Code. In event of the arbitrators finding that the Grantee has defaulted under any of the provisions of this franchise, the Grantee shall have sixty (60) days after the final determination of the question to make good the default before a forfeiture shall result, with the right of the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require. If Grantee admits or does not protest such notice of default, Grantee shall cure such defaults within sixty (60) days or shall forfeit its rights under this franchise.

~~Section 23. Grantee shall, at the request of Grantor, assist Grantor in calculating Grantor's sewer billing, by providing at no~~

~~charge to Grantor accumulated data on Grantee's water customers' consumption; provided, however, that if such assistance shall necessitate substantial modification of Grantee's water customers' consumption; provided, however, that if such assistance shall necessitate substantial modification of Grantee's data accumulation methods and procedures, the parties shall negotiate a reasonable fee to reimburse Grantee for any additional expense incurred to implement this section. The parties shall execute such other agreements as may be necessary to implement this section.~~

Section 23.

(a) Grantee will under separate negotiated agreement, provide at the option and in the sole discretion of the Grantor, billing and collection of Grantor's waste water and sanitation operations as provided in and under the terms of the separate agreement. Representatives of both parties shall meet and determine, prior to final adoption of this ordinance, the methodology required including a mutually agreeable definition of uncollectible accounts and Grantees compensation for services rendered. Prior to the final reading of this ordinance, the separate agreement shall be prepared and presented to the City Commission for its consideration and final approval.

(b) Following any assumption of billing and collection functions as provided in the separate agreement, Grantee shall utilize usual and customary practices to effectuate collections. Grantor shall cooperate with Grantee in any hearing which may be required by FPSC related to the foregoing.

Section 24. Should any section or provisions of this ordinance or any portion hereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder as a whole or as to any part, or other than the part declared to be invalid.

Section 25. All ordinances and parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 26. ~~This ordinance shall take effect on the date upon which the Grantee files its acceptance. This ordinance shall become effective upon its final passage, and shall be in full force and effect from such time Grantee's written acceptance of the franchise granted herein shall relate back to the effective date of this ordinance; such written acceptance from the Grantee shall be filed with Grantor's City Clerk and the filing of the acceptance shall be a condition to the grant of the franchise.~~

PASSED First Reading this \_\_\_\_ day of \_\_\_\_\_, 1996.

PASSED Second Reading this \_\_\_\_ day of \_\_\_\_\_, 1996.

CITY OF FERNANDINA BEACH

By: \_\_\_\_\_  
Its: Mayor - Commissioner

ATTEST: \_\_\_\_\_  
Its: City Clerk

ACCEPTED by Grantee, this \_\_\_\_ day of \_\_\_\_\_, 1996.

FLORIDA PUBLIC UTILITIES COMPANY

By: \_\_\_\_\_  
President

ATTEST: \_\_\_\_\_  
Corporate Secretary

RULES AND REGULATIONS (Continued)

12. Force Majeure (Continued)

been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, and whether caused or occasioned by or happening on account of the act or omission of Company or Customer or any other person or concern not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. A failure to settle or prevent any strike or other controversy with employees shall not be considered to be a matter within the control of the party claiming suspension.

13. Discontinuance of Service

The Company reserves the right, but assumes no liability for failure to do so, to discontinue service to any Customer for cause as follows:

A. Without notice,

- (1) if a dangerous condition exists on Customer's premises in piping or water consuming devices.
- (2) because of fraudulent use of the service or tampering with Company's equipment.
- (3) upon request by Customer, subject to any existing agreement between Customer and Company as to unexpired term of service.

B. After five (5) working days' (any day on which the utility's business office is open and the U.S. Mail is delivered) written notice which is mailed separate and apart from any other bill,

- (1) for non payment of bills for water service.
- (2) when Company has reasonable evidence that Customer has been previously disconnected for nonpayment at present or other location and is receiving service for his own use under a different name in order to avoid past due payments to Company.
- (3) for refusal or failure to make a deposit or increase a deposit, when requested, to assure payment of bills.
- (4) for a violation of these Rules and Regulations which Customer refuses or neglects to correct.
- (5) when customer has not paid after ten (10) working days its sewer bill from the City of Fernandina Beach.

Effective Date: For services rendered on or after \_\_\_\_\_

Type of Filing: 1991 Price Index and Pass Through of Regulatory Assessment Fees Rate Adjustment.

Issued by: F.C. Cressman, President

Effective: \_\_\_\_\_

EXHIBIT B